IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3492 OF 1988

1. Shri Dattatray Kashinath Patil)
Agriculturist,)
At & Post Bordi, Tal. Dahanu,)
Dist. Thane.)
)
2. Shri Suresh Kashinath Patil,)
Agriculturist,)
At & Post Bordi,)
Tal. Dahanu, Dist. Thane)
)
3. Thakorebhai Maganlal Shah)
At & Post Bordi, Tal. Dahanu,)
Dist. Thane.) .....Petitioners.

V/s

1. State of Maharashtra)
)
2. Additional Commissioner, Konkan)
Division Bombay.)
)
3. Tahsildar of Talsari, Talsari,)
Dist. Thane,)
)
4. Smt. Sitabai Vikal Valvi,)
at Borigaon, Tal. Talsari,)
Dist. Thane.)
)
5. Ramesh Vakil Valvi,)
(since deceased) through his heirs)
and legal representatives.)
)
5A) Smt. Ratnubai Ramesh Dalvi,)
(Wife) Age Adult, Occupation)
Agriculturist.)
)

5B) Shri Nitesh Ramesh Valvi, (Son),)
Age adult. Occupation)
Agriculturist,)
Both are residing at Borigaon,)
At Post Bordi, Taluka Talasari,)
Dist - Thane.)
)
6. Shri Ukardya Pangu Shingda,)
(since deceased) through his heirs)
and legal representatives.)
)
6A) Shri Shankar Ukardya Singada)
(Son))
)
6B) Shri Baiju Ukardya Singda, (Son))
deleted as per court order dated)
1-8-2007.)
)
6C) Smt. Sarswati Suresh Gire)
(Daughter))
All adults. Occupation Agriculturist)
All residing at Post Bordi, Taluka)
Talasari, Dist - Thane.)

(Amendment carried out as per)
court order dated 24-8-2007 in)
Civil Applin No.1716 of 2006 in)
W.P. 3492/88 [Coram:-)
V.M. Kanade, J.]) .... Respondents.

Mr. V.A. Gangal, Sr. Counsel with Mr. Ashok Gade & Chandrakant Yadav for Petitioners.

Mr. R.M. Pathe, AGP for Respondent Nos. 1 to 3.

Mr. S.M. Railkar for Respondent Nos.4, 5(A), 5(B), 6(A) & 6 (C).

CORAM: V.M. KANADE, J.

DATE : 6th/7th September, 2007

ORAL JUDGMENT:

1. Heard the learned Counsel appearing on behalf of Petitioners and the learned Counsel appearing on behalf of Respondent Nos. 4, 5(A), 5(B), 6(A) & 6(C).

2. By this Petition, Petitioners are challenging the order passed by the Additional Commissioner of Konkan Division, Bombay who had directed that the possession in respect of the lands in question be restored in favour of Tribals under the provisions of Maharashtra Restoration of Lands to Schedule Tribes Act, 1974.

3. Brief facts which are relevant for the purpose of deciding this Petition are as follows:-

4. Suit lands are situated at village Borigao, Taluka Dahanu, District Thane being Survey No. 30 and Survey No.37, Hissa No.2 admeasuring 2 acres and 6 gunthas and 3 acres and 2 gunthas respectively. It is an admitted position

that Petitioner Nos. 1 and 2 were ordinary tenants in the said land. Petitioner No.3 was the landlord of the said lands. He terminated their tenancy in 1956 and filed a tenancy case against Respondent Nos. 1 and 2 vide Tenancy Case Nos.98 and 99 of 1957 in the Court of Tahsildar Thane. By order dated 25/5/1957, the Tahsildar decided both these cases in favour of Petitioner No.3 and Petitioner Nos. 1 and 2 voluntarily handed over possession of the lands to Petitioner No.3 since the notice of termination was issued prior to the datum line i.e 01/04/1957. Accordingly, revenue records were changed by Mutation Entries Nos. 180 and 181 and this was confirmed and certified after due inquiry was held by the concerned authority on 31/10/1957. It is an admitted position that neither the order passed by Tahsildar, Dahanu nor the Mutation Entries which were made consequent to the order passed by the Tahsildar have been challenged at any time by the tenants.

5. Thereafter in 1960, Petitioner No.3 entered into agreement of sale in respect of the said lands with Petitioner Nos. 1 and 2 and, thereafter, on 26/5/1960, Petitioner No.3

agreed to transfer the lands in favour of father of Petitioner Nos. 1 and 2 for lawful consideration.

6. The Maharasthra Restoration of Lands to Schedule Tribes Act came into force in 1975. It is an admitted position that Respondents - original tenants did not make any application for restoration of lands. Some time in 1980, the Tahsildar of Talasari initiated suo motu proceedings under section 3 of the said Act and an inquiry was held and he came to the conclusion that the lands did not belong to Tribals and, therefore, proceedings were dropped. This order was passed on 26/12/1982. This order was not challenged by Tribals. No order also was passed by the State Government to reopen the case. On 02/02/1984, the Additional Commissioner, Konkan Division, Shri T.K. Kamble, by his order dated 02/02/1984, issued show cause notice and inquiry was again initiated by him in respect of the said lands. Petitioners filed their reply. The Additional Commissioner, Konkan Division passed the impugned order directing the Tahsildar to restore the said lands to the concerned Tribals after hearing both parties and remanded

the matter back to the Tahsildar for necessary action. The Tahsildar, pursuant to the directions given by the Additional Commissioner, directed that both the lands be restored to the Tribals by order dated 30/7/1986. On 05/06/1988, the notice was sent to the Petitioners directing them to hand over possession of lands to Tribals. Being aggrieved by the aforesaid order, Petitioners have filed this Petition and this Court was pleased to grant rule and stay to the impugned order.

7. The learned Counsel appearing on behalf of Petitioners has submitted that prior to 01/04/1957, tenancy of tenants was terminated by issuing three months' notice and, thereafter, tenancy case was filed which was allowed by Tahsildar. The respondents - tenants voluntarily handed over possession of the land to the landlord and, accordingly, Tahsildar allowed the tenancy case filed by the landlord. The learned Counsel submitted that in view of termination of tenancy of the original tenants prior to 01/04/1957, tenants did not get any right of purchasing the lands under the provisions of Section 32-G of the Bombay Tenancy and

Agricultural Lands Act. He submitted that merely, by operation of statute, the said lands did not vest in tenants on 01/04/1957 and that it was necessary and essential for them to have purchased the said lands after showing their willingness to do so. He submitted that the tenants having exercised option as laid down under section 32-G of not purchasing the said lands, they did not get the status of being deemed tenants or owners of the said lands. He submitted that, therefore, the question of restoration of lands to the tenants under Restoration of Lands to Schedule Tribes Act did not arise. In support of the said submission, he relied on the judgment of this Court in Puna Arjun Mali Vs/ Mana Bhil reported in **1992 Mh.L.J. 46**. He also relied on the judgment of the Division Bench of this Court in Automotive Research Association of India Vs. State of Maharahtra, reported in **2003(1) Mh.L.J.604.** Mr. Gangal, the learned Counsel appearing on behalf of Petitioners then submitted that, in any case, the Tahsildar could not have exercised the power vested in him under section 7 of the Restoration of Lands to Schedule Tribes Act after a lapse of more than three years. He submitted that the Tahsildar of

Talasari, after having held suo motu inquiry under section 3 of the said Act and after having dropped the proceedings, it was not open for the Additional Commissioner to again start a second round of inquiry and that such a power of review or revision was not vested in the Additional Commissioner and, in any case, the said inquiry should not have been initiated after a lapse of three years. In support of his submissions, he also relied on Division Bench judgment of this Court in the case of State of Maharashtra and another Vs. Khatua Makani and Company Pvt. Ltd. Bombay and others reported in **1987 Mh.L.J page 908.**

8. The learned Counsel appearing on behalf of Respondent Nos.4, 5(A), 5(B), 6(A) & 6(C) submits that the Petitioners have come to this Court belatedly and have not challenged the order which was passed by the Additional Commissioner in 1984 and only after the order was passed by Tahsildar, Petitioners have filed this Petition and, as such, there is delay of almost four years in challenging the order passed by the Additional Commissioner and, on that ground alone, Petition was liable to be dismissed. He further submitted

that the Additional Commissioner was competent to initiate suo motu inquiry and there was no delay caused in initiating the said inquiry since under section 7 of the said Act he was competent to initiate suo motu inquiry at any time. He submitted that learned Single Judge of this Court had an occasion to consider and interpret these words which are found under the said Act and the learned Single Judge had held that the words “at any time” would mean any time between 3 to 30 years. He relied on the judgment of the learned Single Judge of this Court in Udhav Uttam Patil Vs. Daga Holkya Patil reported in **2001 (3) Mh.L.J. 916.** He submitted that, in the Petition, and more particularly in paras 2, 3 and 4, details regarding the time when Respondent Nos. 4 to 6 voluntarily handed over possession of the suit lands were not mentioned and no particulars were given. He submitted that under the provisions of Section 31 of the Bombay Tenancy and Agricultural Lands Act, certain requisite conditions had to be complied with and only then tenancy could stand terminated. He submitted that, in the instant case, there is nothing on record to indicate that the said provisions had been complied with by Petitioner No.3

and, therefore, it could not be said that tenancy was validly and legally terminated. He further submitted that the Additional Commissioner had given notice to Petitioner No.3 and that pursuant to the said notice, he had remained present and he was duly heard and, therefore, it was not open for Petitioners to say that an ex parte order was passed of initiation of the said proceedings. He further invited my attention to the observations made by the Apex Court in the case of Lingappa Pochanna Appealwar V/s. State of Maharashtra and another reported in **AIR 1985 SC 389** wherein the Supreme Court in para 16 had made certain observations before upholding the validity of the said Act. He then submitted that the Additional Commissioner had remanded the matter back only to the extent of 30 Rs and 35 Gunthas in the said survey number since there was nothing on record to show that the entire land was handed over. He also relied on the provisions of section 31A of the said Act in support of his submission. He also submitted that the conditions of termination of tenancy were not complied with and, as such, the said order of Tahsildar which was passed in May 1957 was patently illegal and non-est and,

therefore, the Additional Commissioner was justified in suo motu initiating the inquiry.

9. I have given my anxious consideration to the submissions of both the parties.

10. In the present case, it is an admitted position that the Petitioner No.3 terminated tenancy of Respondent No.4 to 6 herein in 1956 and filed Tenancy Case No.98 of 1957 and Case No.99 of 1957 in the Court of Tahsildar of Dahanu and that both these cases were decided in favour of Petitioner No.3 and the Respondent No.4 to 6 handed over possession of the land to the Petitioner No.3. Pursuant to the said order passed by the Tahsildar, even Mutation Entries were made and confirmed after inquiry was held. It is an admitted position that in the said tenancy proceedings, the Mutation Entries, which were made pursuant to the order passed in the tenancy cases, have not been challenged by the tenants. However, it is an admitted position that the Tahsildar of Talasari suo motu started restoration of case No.119 vide order dated 26/12/1982 under section 3 of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 and after

holding an inquiry, he came to the conclusion that the land does not belong to Tribals and then the proceedings were dropped. Thereafter, on 02/02/1984, suo motu proceedings were initiated by the Additional Commissioner, Konkan Division and directions were given to the Tahsildar to restore the said land and the Tahsildar, pursuant to the directions of the Additional Commissioner, by order dated 30/07/1986 directed that the land be restored to the Tribals.

11. In my view, submissions made by the learned counsel for Petitioners will have to be accepted firstly on the ground that, even prior to 1/4/1957, tenancy of tenants has been terminated and the lands have been handed over to the landlord. The Respondent No.4 to 6, therefore, did not become deem purchasers within the meaning of Section 32-G of the Bombay Tenancy and Agricultural Lands Act and, therefore, question of restoration of the said land under the provisions of Maharashtra Restoration of Lands to Schedule Tribes Act 1974 did not arise. The ratio of the judgments on which reliance has been placed by the learned counsel for Petitioners squarely applies to the present case. Division

Bench of this Court in the case of State of Maharashtra and Anr. V/s. Khatua Makanji and Company Pvt Ltd., Bombay and Ors reported in **1987 Mh.L.J. 908** has held that if the tenants are not willing to purchase tenanted land and the purchase becomes ineffective and possession in consequence thereof being handed over to the landlord, in such cases, provisions of Section 3 and 4 of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 would have no applicability. In the said case, Division Bench in para 5 has observed as under:-

> "5.....
> .....
> .....It is evident that subject matter of 'transfer' in the definition clause is "land belonging to a tribal". The use of expression "belonging to a Tribal" after the expression of "transfer of land", to our mind, makes it abundantly clear that the question of transfer can arise only if the agricultural land belonged to the Tribal i.e. the title in the agricultural land vested in the Tribal. We have already held that the title in the disputed land never vested in the Tribal tenants in this case as the purchases

> became ineffective at the very threshold when they made statements that they were not willing to purchase the lands. In the circumstances, we do not see any difficulty in holding that the tribals herein had not transferred any agricultural lands belonging to them to the respondents nor were the respondents deemed to have purchased these lands during the material period from them and consequently Sections 3 and 4 of the Restoration Act have no application in this case".

12. In the present case, prior to 1/4/1957, land was voluntarily handed over to the landlord and Tenancy Court passed an order in favour of the landlord. That being the position, in my view, the provisions of Section 3 and 4 of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974, therefore, will have no applicability and, therefore, Additional Commissioner committed an error of law which is apparent on the face of record by directing the Tahsildar to hand over the possession of the land to the Respondent Nos.4 to 6. Similarly, ratio of the judgment in the case of Puna Arjun Mali (supra) also, in my view, squarely applies to the facts of the present case. In the said case, question

before the Court was whether a deemed purchaser on statutory transfer under the Tenancy Law was not included in terms of “transfer” defined for the purpose of Maharashtra Restoration of Lands to Scheduled Tribes Act. The learned Single Judge after interpreting Section 2(1)(i) of the Maharashtra Restoration of Lands to Scheduled Tribes Act held that provisions of the said Act have exceptions to the validity of transfer which otherwise is lawful. The said provisions will have to be construed strictly and therefore, deemed purchase under a Statute cannot be said to be “transfer” within the meaning of Section 2(1)(i) of the Maharashtra Restoration of Lands to Scheduled Tribes Act. That being the position, Additional Commissioner was not justified in suo motu starting proceedings for the restoration of the land under Section 7 of the said Act.

13. The second submission of the learned Counsel for Petitioners is that there was a delay caused in initiating restoration of proceedings under Section 7 of the said Act and, therefore, on that ground also the said proceedings were liable to be set aside. In support of the said submission,

the learned Counsel for Petitioners relied on the judgment in the case of Automotive Research Association of India (supra) wherein, Division of this Court, while construing provisions of Section 34 of Urban Land(Ceiling and Regulation) Act, held that where no limitation was prescribed, application had to be preferred within a reasonable period of time. That period of three years from the date of order will always be termed as reasonable.

14. On the other hand, learned counsel for the Respondent Nos. 4, 5(A), 5(B), 6(A) & 6(C) relied on the judgment of learned Single Judge of this Court in the case of Udhav Uttam Patil(Supra) wherein the learned Single Judge has held that reasonable period of limitation in a case where suo motu powers can be exercised by the Commissioner under Section 7 would be thirty years. He invited my attention to the judgment and order of the learned Single Judge wherein this Court has held that since the power of revision was exercised after 20 years, power was exercised within a period of less than 30 years and therefore, said period was held to be a reasonable period. He also relied on the judgment of the

Apex Court in the case of **Uttam Namdeo Mahale V/s. Vithal Deo and Ors.** reported in **(1997) 6 SCC 73.** In my view, since the first submission made by the learned counsel for the Petitioners has been accepted, it will not be necessary for this Court to decide this issue. Learned Counsel for Respondents also further argued that termination of tenancy by the landlord was contrary to the provisions of Section 31 and 31A. He invited my attention to the relevant provisions. He submitted that, therefore, order passed by the Tenancy Court was illegal. The submissions made by the learned Counsel for Respondents cannot be accepted since tenants, in the first place, did not challenge said proceedings and orders passed by the Tenancy Court have attained finality. However, even Additional Commissioner has noted that the tenants have voluntarily surrendered their land to the landlord. This fact also was noted by the Tahsildar who had suo motu initiated inquiry under section 3 of the Maharashtra Restoration of Lands to Scheduled Tribes Act and had dropped the proceedings. That being the position, it will not be open for the Respondents No.4 to 6 to now question the validity of the orders passed in the tenancy

cases initiated by the landlord.

15. Learned counsel for the Respondents 4, 5(A), 5(B), 6(A) & 6(C) submitted that Petitioners were not entitled to challenge the order passed by the Additional Commissioner after a lapse of four years and that there was delay in challenging the said order. This submission cannot be accepted for the simple reason that the Petitioners, in this petition, have made specific averments that the order passed by the Additional Commissioner was not communicated and they came to know about the said order after Tahsildar informed them. The Petitioners have stated in their petition that they were intimated for the first time by notice dated 05/06/1988 about the decisions which were taken by the Additional Commissioner and thereafter by Tahsildar. Admittedly, no affidavit in reply has been filed by the Respondents herein. These averments have not been controverted. It will not be open for Respondents to raise the issue of limitation, particularly when averments which are made in the petition have not been controverted and disputed by them. Averments, therefore, in para 9 of the

petition to the effect that the Petitioners were intimated for the first time by notice dated 05/06/1988 will have to be accepted. The Writ Petition was filed on 12/07/1988 and, therefore, it cannot be said that there was any delay in challenging the impugned order passed by the Additional Commissioner.

16. In the result, Writ Petition is allowed. Impugned order passed by the Additional Commissioner is set aside and order passed by the Tahsildar implementing order of Additional Commissioner is also set aside. Writ Petition is made absolute in terms of prayer clause(a) and disposed of accordingly.

(V.M. KANADE, J.)